IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 442 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAYARAM MEGHJI

Versus

KARSAN MERA, DECD.THRO HEIRS

Appearance:

1. Civil Revision Application No. 442 of 1991

MR DA BAMBHANIA for Petitioner No. 1

RULE SERVED for Respondent No. 1-1/C

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/04/2004

ORAL JUDGEMENT

The petitioner herein is the original defendant against whom the respondent herein has filed a suit being Regular Civil Suit No.269/1981 in the Court of Civil

Judge (J.D.) at Anjar. The said suit was filed under Section 6 of the Specific Relief Act. The case of the plaintiff is that he is occupying land admeasuring 10'X10' situated in ward No.6 on the bank of Siddheshwar Tank. The defendant No.2 transferred the cabin in question to the plaintiff. Thereafter, the plaintiff obtained permission from Municipality and constructed pacca premises on 16-10-1981. The defendant No.2 and his companions came with weapons and threw away the goods from the plaintiff's shop and by pushing the plaintiff out, took forcible possession of the premises. Therefore, the plaintiff filed aforesaid suit by resorting to Section 6 of the Specific Relief Act for restoring the possession. The said suit was filed on the basis of possessory title and the same was filed within the limitation period prescribed under Section 6 of the Specific Relief Act. The defendant appeared and resisted the suit by filing written statement. The trial Court after recording the evidence, allowed the said suit of the plaintiff and the defendant was directed to hand over the possession to the plaintiff. Against the aforesaid order of the trial Court, the petitioner herein preferred an appeal being Regular Civil Appeal No.105/1984 before the District Court, Kachchh at Bhuj. The said appeal was heard by the District Judge and ultimately the same was rejected. The learned District Judge came to the conclusion that the appeal is not maintainable under the Specific Relief Act. It is this order, which is under challenge in this Revision Application.

2) After going through the judgement of the appellate Court and after hearing Mr.Bambhania, learned advocate for the petitioner, I am of the opinion that there is absolutely no substance in this Civil Revision Application. When the suit is filed under Section 6 of the Specific Relief Act, the order passed in such suit is not appealable and therefore, the District Judge is perfectly justified in coming to the conclusion that the appeal is not maintainable. The petitioner herein has not challenged the order of the trial Court by filing a revision application and even by filing present Civil Revision Application he has challenged the order passed by the appellate Judge. In the prayer, the petitioner has prayed that the order of the appellate Court confirming the order of the trial Court may be quashed and set aside. As a matter of fact, the appellate Court is perfectly justified in coming to the conclusion that appeal is not maintainable and therefore, it cannot be said that the appellate Court has committed any jurisdictional error. The petitioner was required to file a substantive petition challenging the order of the

trial Court, which has not been done by him. By its order, the trial Court came to the conclusion that the petitioner after taking law in his hands, forcibly dispossessed the plaintiff in a high handed manner.

4) Considering the aforesaid aspect of the matter, in my view, it cannot be said that the appellate Court has committed any mistake by holding that the appeal against such order of the trial Court is not maintainable. Therefore, I do not find any substance in this Civil Revision Application. Accordingly, this Civil Revision Application is disposed of. Rule is discharged. No costs.

(P.B.Majmudar,J.)
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